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December 2, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: WC Docket No. 04-313, CC Docket No. 01-338

Dear Ms. Dortch:

We understand that the Commission is currently considering an impairment standard for dedicated transport that combines the business line threshold test proposed by ALTS and other CLECs including Alpheus Communications L.P. ("Alpheus") and the number of fiber based collocators in a particular central office. Alpheus maintains that the proposed transport test represents a vast overcorrection to the concerns enumerated by the DC Circuit in *USTA II*. Instead, the proposed rules would return the telecommunications industry to the pre-1996 state of affairs. History will note that the fear of the judicial branch by the executive branch has completely disenfranchised the express will of the legislative branch in these matters – while stranding billions of dollars of private investment. Accordingly, the Commission should modify its transport test to be consistent with its stated goal of preserving facilities based competition and not undermining the market opening provisions of the 1996 Act and should reject the transport test proposed by the RBOCs.

There are several factors in the RBOC transport test that have the effect of virtually eliminating CLEC access to dedicated transport. First, the business line thresholds proposed are simply too low. Verizon's and Bell South's proposed tests would eliminate transport unbundling for all wire centers with more than 5,000 business access lines.[1] SBC would eliminate all unbundling for dark fiber and DS3 and above transport and DS1 transport unbundling between wire centers with more than 10,000 business access lines, or between one such wire center and a wire center with between 5,000 business access lines and 10,000 business access lines.[2] The

[1] Verizon Comments, at 82; Bell South Comments, at 39.

[2] SBC Comments, at 69-70.

5,000 business line threshold the RBOCs propose would remove dedicated transport to even the most remote central offices in West Virginia and New Hampshire for example, where there is simply no existing competitive deployment nor any reasonable expectation that such deployment is possible in the future.

The RBOC transport test contains several flaws. As demonstrated below, the 5,000 and 10,000 business line thresholds eliminate far more transport than the Commission can possibly justify based on either actual or potential deployment. In addition, the RBOC suggestions that use of fiber based collocators as a proxy for potential and actual self deployment suffers from flaws as well, namely the number of fiber based collocators and the reliance on unmatched pairs of collocators in the central offices on a transport route.

The RBOC overreaching is evident in the business line threshold comparison provided by Conversent, comparing actual wire center density data from New Jersey to the ALTS transport test, which is similar to the test Alpheus proposed for dark fiber transport.[3] The Conversent study demonstrates that the incumbents' proposed tests would remove far more dark fiber transport routes and locations from unbundling and grossly overestimate the presence and potential for competitive deployment. Conversent's study demonstrates that the incumbent's proposals are grossly unreliable measures of impairment in the transport market, including dark fiber.[4] For example, in Massachusetts under the *TRO* triggers, Verizon claimed that there were "182 routes that met the self-provisioning trigger for dark fiber and 57 routes that met the wholesale trigger for dark fiber.[5] Under the Bell South and Verizon tests, 3655 transport routes would no longer be subject to any unbundling and under SBC's test, 2914 routes would not be subject to any unbundling.[6] Similarly, in New Jersey, Verizon claimed that 182 routes met the self-provisioning trigger for dark fiber and 572 met the wholesale trigger for dark fiber.[7] Under the tests proposed by Bell South and Verizon, however, 7875 transport routes would no longer be subject to any unbundling in New Jersey. Likewise, under the SBC test, 7095 routes would no longer be subject to any unbundling for any type of transport.[8] It is clear from Conversent's comparison that the RBOCs' proposed impairment tests eliminate unbundling for dark fiber and other transport far beyond anything contemplated by the *TRO*. The Commission must reject the incumbent's proposals as grossly unreliable measures of impairment in the dark fiber transport market.

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[3] The ALTS and Alpheus test were not, however, identical.

[4] *Reply Comments of Conversent Communications, LLC*, at 9 (Oct. 19, 2004) ("*Conversent Reply Comments*").

[5] *Conversent Reply Comments*, at 7.

[6] *Id.*

[7] *Conversent Reply Comments*, at 8.

[8] *Id.*

Likewise the fiber based collocators aspect of the transport test is similarly flawed, particularly when the Commission is urged to employ unmatched pairs of collocators in the central offices as triggers for its impairment analysis. The incumbents have touted that the presence of fiber-based collocators is a reliable indicator of the extent of facilities based competition in the transport market, including the market for unbundled dedicated dark fiber transport.[9] For example, Bell South maintains that the "presence of fiber-based collocation provides a readily accessible indication of the level of competition in an area, as it clearly shows that alternative networks have been deployed and are accessible from a particular central office."[10] Alpheus does not agree with the RBOCs' position. Two separate carriers, each having deployed fiber to a separate central office offers no basis for the Commission to infer that deployment of transport between those central offices is economic for a reasonably efficient carrier.

Further, even where the fiber-based collocators are matched there are reasons why the two offices have not been connected, namely that connecting the offices is not economically feasible. For example, we are aware of transport routes in New England where CLECs are collocated in two Verizon central offices in the same state but the transport route between the two offices is approximately 60 miles in length. While a CLEC has fiber deployed to each of the central offices it did so presumably based on specific customer demand for service in that specific location and because, due to the local terrain and the customer proximity to the central office, the deployment of a fiber loop was far less costly than the deployment of a fiber link between the two offices. Instead, the CLEC uses dark fiber transport between those two offices. As this example demonstrates, fiber based collocators alone is not a reasonable proxy for when competitors can deploy transport between central offices.

In addition, in the attached exhibits Alpheus demonstrates that the use of only two matched fiber based collocators has a severe impact on the availability of dedicated transport in Dallas and Houston and virtually eliminates dedicated transport to those central offices where CLECs obviously remain impaired without access to such bottleneck elements. Importantly, this illustration is not speculative; rather, this data was provided by SBC itself under oath. This devastating model is virtually indistinguishable from the overreaching proposals the RBOCs offered in their initial comments. The RBOC fact report for example, indicates that CLECs have at least one fiber-based collocation in only 25% of the central offices in each Dallas and Houston.[11] Of course, these 25% will be the central offices most likely to attract competition – but would also be the 25% where virtually all competition is lost. The attached maps demonstrate that the Commission's proposed test removes transport in far more locations than where there is any indicator of actual competition.

Alpheus understands that the Commission believes its transport impairment test must address the possibility that the existence of competitive deployment in one location requires an

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[9] *See, e.g.*, Bell South Comments, at 39-40.

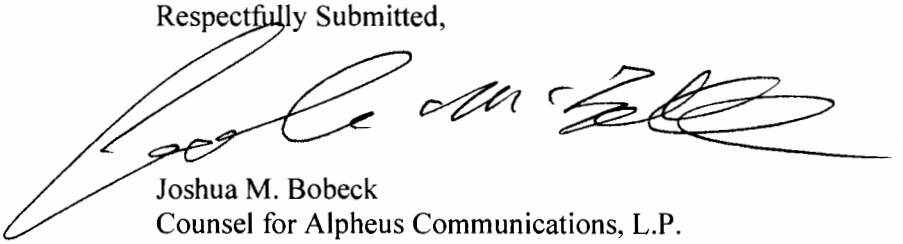
[10] Bell South Comments, at 39.

[11] RBOC UNE Report at E-1.

inference that such deployment is possible in another location despite the fact there has been no deployment to date. While Alpheus emphatically believes that *USTA II* does not require such inferences but only that the Commission properly consider them, any scheme that relies on 2 collocators is simply too destructive.

It appears that the Commission prefers to use fiber-based collocators as a proxy for actual competition and business lines as a proxy for potential competition. Unless there is evidence that the collocated CLEC has connected one central office to another in order to provide dedicated transport between the offices, however, the fiber based collocators test includes a significant inferential component. Thus, when there is a low number of fiber based collocators such as 2, the fiber based collocator test becomes unbalanced, being weighted more towards potential competition and less towards actual competition because the chances of one of the two collocators providing transport between its two collocations is marginal. Increasing the number of fiber based collocators could increase the likelihood (but is not at all dispositive) of actual competition on the route and could possibly restore some of the balance back to actual competition. As it stands now the Commission's transport test forsakes an evaluation of where competitors have deployed competitive transport to chase the holy grail of potential competition. The result will be significant false positives, where the Commission eliminates UNE transport and the market provides no safety net, stranding CLECs and their customers. Such a result is plainly inconsistent with the Act.

Respectfully Submitted,



Joshua M. Bobeck
Counsel for Alpheus Communications, L.P.

Enclosures

cc: Honorable Michael K. Powell
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Scott Bergmann
Jeffery Carlisle
Michelle Carey
Thomas Navin
Jeremy Miller
Russell Hanser
Pamela Arluk
Carol Simpson
Tim Stelzig
Ian Dillner
Marcus Maher
Gail Cohen
Cathy Zima

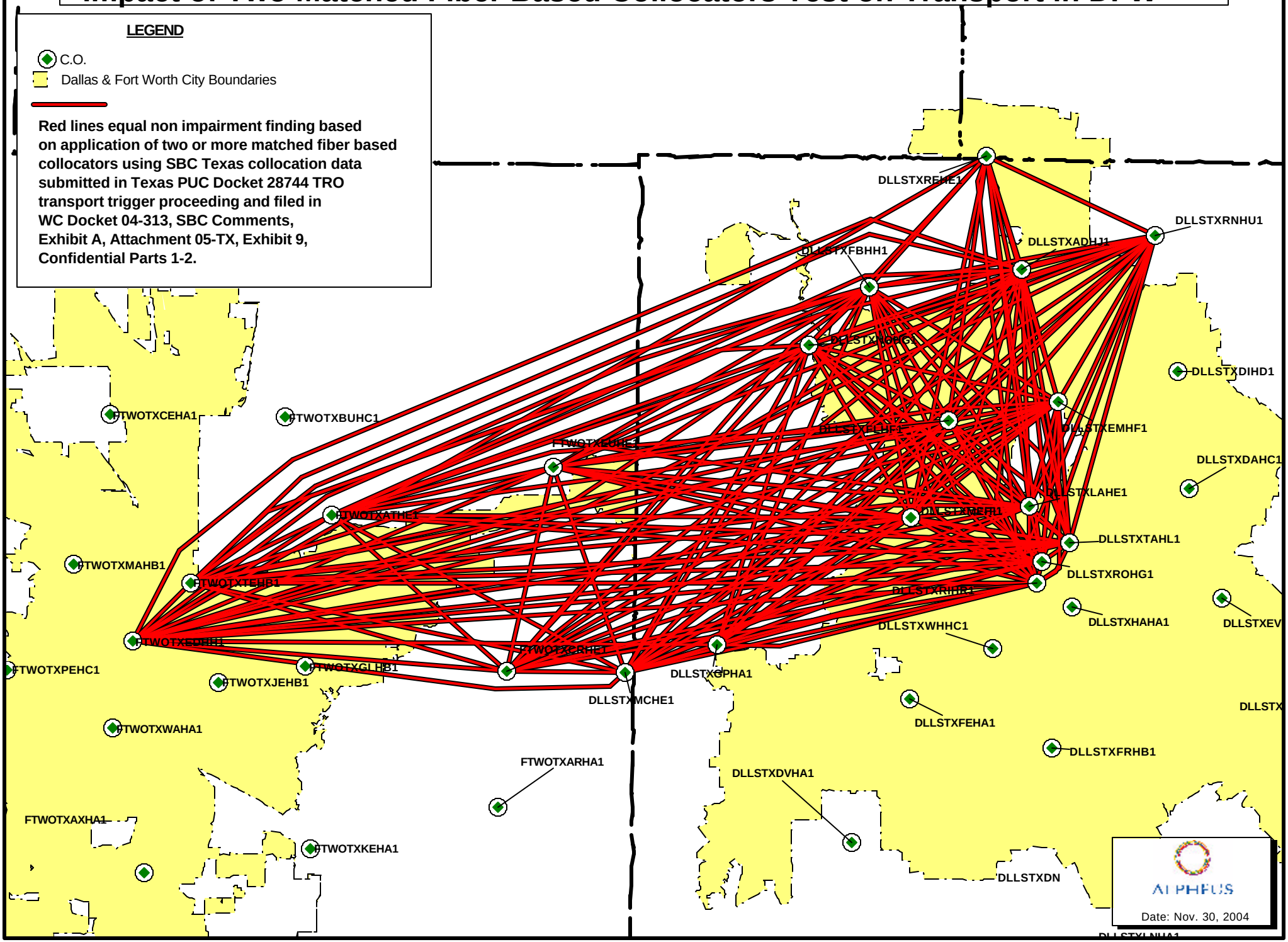
Impact of Two Matched Fiber Based Collocators Test on Transport in DFW

LEGEND

C.O.

Dallas & Fort Worth City Boundaries

Red lines equal non impairment finding based on application of two or more matched fiber based collocators using SBC Texas collocation data submitted in Texas PUC Docket 28744 TRO transport trigger proceeding and filed in WC Docket 04-313, SBC Comments, Exhibit A, Attachment 05-TX, Exhibit 9, Confidential Parts 1-2.



Impact of Two Matched Fiber Based Collocators Test on Transport in Houston